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Current Topics.

The Speaker of the House of Commons.

THE death of Captain The Hon. E. A. FITZROY, as well as removing from the scene as gifted and as popular a Speaker as ever graced the Chair of the Commons, has created a legal position of some awkwardness. When the Serjeant at Arms walked up the floor of the House and removed the Mace from the table on the 3rd March, prior to the announcement of the death of Captain FITZROY, he signalised the fact that the House of Commons had ceased to have legal existence as a factor in the Constitution and had become a mere convention. The Speaker's Mace, though reviled as a bauble by a notable of the seventeenth century, and the subject of attempted violence by a rebel member in 1930, two years after Captain FITZROY's accession to the Chair, remains the symbol of the Speaker's authority, and the sittings of the Commons are impossible without it. The impossibility of proceeding with legislation which might be of an urgent emergency nature had apparently been considered by the Government, and a Bill had been in draft to deal with the situation of a Speaker dying whilst in office, so as to enable the Deputy Speaker to act legally as Speaker until a new Speaker should be chosen. As however the Government apparently felt that such a measure would raise constitutional problems of a controversial character, the measure was not proceeded with, and no legislative action has been taken in the present circumstances. Although the House cannot legally sit as a legislative chamber, it nevertheless may be convened as an assembly for the purpose of electing a Speaker. Even then the House is not duly and legally constituted until royal approbation to the election is conveyed by the Lords Commissioners. On the 9th March, Colonel The Rt. Hon. DOUGLAS CLIFTON BROWN was elected the new Speaker of the House of Commons. Colonel Clifton Brown entered the House of Commons in 1918 as Conservative Member for Hexham. In 1938 he was appointed Deputy Chairman of Ways and Means, and recently succeeded Lord Hemingford as Chairman of Ways and Means and Deputy Speaker.

Courts (Emergency Powers) Acts.

THE introduction of a Bill in the Lords on 3rd March "to consolidate the Courts (Emergency Powers) Acts, 1939 to 1942, and certain enactments relating to the possession of mortgaged land," will be welcomed by all who have to consult these Acts in the course of their daily work. The consolidation will involve the repeal of three Courts (Emergency Powers) Acts (1939, 1940 and 1942), the Possession of Mortgaged Land (Emergency Provisions) Act, 1939, and Pt. II of the Liabilities (War-Time Adjustment) Act, 1941. The drafting involved the piecing together into a symmetrical code of the various sections of the repealed Acts, and the result is one Act of fourteen sections and two schedules, which will obviously be much easier both for study and for reference purposes. Perhaps it is not too much to hope that this salutary codification is but the prelude to other consolidations in equally difficult fields, notably that of Rent Restrictions.

Evidence and Powers of Attorney Bill.

A BILL to amend the Evidence and Power of Attorney Act, 1940, was introduced in the House of Lords on 3rd March, and read a first time. After s. 1 (2) of the principal Act, which enables provision to be made for empowering officers of His Majesty's forces and members of the diplomatic, consular or other foreign service of a foreign power to administer oaths and take affidavits in time of war, the Bill proposes to insert a new subs. (2). This provides that if the Lord Chancellor is satisfied that in any country or place outside the United Kingdom conditions are such that adequate provision for the administration of oaths and the taking of affidavits cannot be made by means of orders under the foregoing provisions of the section, he may by order provide for empowering other persons to administer oaths and take affidavits in that country or place for the purposes provided in the Act. The Bill also provides for the deposit of photographic copies of certain powers of attorney and of any affidavits of due execution instead of the originals. It further makes provision for the law of perjury and forgery to apply to oaths and affidavits made in pursuance of s. 1 of the principal Act. In any proceedings for an offence committed outside the United Kingdom in connection with any affidavit or other document of which a photographic copy is transmitted to any part of the United Kingdom, the copy may be used in evidence without proof of the destruction of the original, as if such proof had been given. Finally, the Bill provides that the Secretary of State may by order direct that so much of s. 6 (2) of the Commissioners for Oaths Act, 1889, as relates to the proof of notarial acts done in foreign countries and places by British diplomatic and consular officers, shall apply in relation to notarial acts done by such persons as may be specified in the order, being persons serving in the diplomatic, consular, or other foreign service of a power which, by arrangement with His Majesty, has undertaken to represent his interests in any country or place in which His Majesty has for the time being no diplomatic or consular representatives.

Accounts of Unit Trusts.

SINCE the passing of the Companies Act, 1929, there has been a certain amount of healthy dissatisfaction concerning the amount of real information about the financial position of companies that finds its way into published balance sheets. In the case of management companies of unit trusts, the relation to the public becomes of even greater importance, because their relation to the public may be compared to that of a trustee, whose duty of full account is well known. The Municipal and General Securities Co., Ltd., managers of an important group of unit trusts, recently took the step of showing what was taken by them as managers out of the money of the people who buy and sell units as remuneration and other emoluments in return for the services they render. After conferring with their accountants, the directors dissected the gross profit and loss accruing to the company as managers from all sources, including those which involved it in risk and those which did not, those from the creation and issue of sub-units, from the preliminary charges added to the prices at which sub-units were issued, from the semi-annual management charge, and other charges. The Government had given a pledge that no figures would be required which would disclose the growth or size of a unit trust, and the information is given in the form of percentages for this reason. These precentages, although they are formed on different bases and cannot give a total percentage gross profit, nevertheless provide more detailed information in many respects than that required by the Anderson Committee in 1936. What the company has done, in effect, is to anticipate the implementation of the Prevention of Frauds (Investments) Act, 1939, which requires the audit and circulation of managers' accounts "in relation to the trust" as a condition for the approval of a unit trust. Both the Society of Incorporated Accountants and Auditors and the Institute of Chartered Accountants have made pronouncements during the past year concerning disclosure in company accounts, and both bodies have expressed themselves in favour of greater disclosure. Secrecy in the past has depended for its justification of the efficacy of competition in producing the goods and getting them to the market. Increased disclosure in accounts has not kept pace with diminishing public faith in the efficiency of unbridled competition. In the case of the unit trusts there is an added reason for further publicity, namely, the specially confidential relationship in which the management company stands towards the holders of units and sub-units

The Uthwatt Report: Further Observations.

THE council of the Auctioneers' and Estate Agents' Institute of the United Kingdom has submitted a memorandum to the appropriate Government departments, containing observations on the Final Report of the Expert Committee on Compensation and Betterment. For the sake of brevity only those points are dealt with in detail where the council are not in agreement with the recommendations on the report. With regard to the acquisition by the State of development rights in undeveloped land, the council note that several of the amendments and safeguards which they put forward in their memorandum last year are included in the Uthwatt Committee's recommendations. The council consider that there are weighty objections to a "global valuation" for the purpose of ascertaining a single sum for the compensation for development rights in the whole country, and that there are considerable difficulties in arriving at a figure which will be justly related to the aggregate of the valuations of individual properties and to future economic conditions. In any case, they consider that the sum constituting the General Compensation Fund should be determined by an independent tribunal, which should be given authority to hear evidence. With regard to the distribution of the General Compensation Fund, the council suggest that a right of appeal would reconcile the owners to the proposals, without holding up the actual acquisition of development rights. The council suggest that appeals against the valuation of individual development rights should be heard by an official arbitrator or a referee under the Finance Act, 1910. The council also objects to the suggestion that the acquiring authority for reconstruction and other areas should not be required to serve notices to treat. The council believe that the established practice of serving notices to treat is the most convenient procedure for defining what land it is proposed to acquire and the date of the proposed acquisition. The council hope that when statutory effect is given to the recommendations in the report the method adopted for the assessment of compensation on the acquisition of land will be that of a single new Act embodying as far as possible a complete code of compensation law, rather than a series of patchwork amendments to the existing legislation.

Anomalies of Taxation.

THE Chancellor of the Exchequer received a deputation on 5th March from the Association of British Chambers of Commerce and the Federation of British Industries, and gave assurances that he would give careful consideration to their representations. The Chairman of the Taxation Committee of the Federation of British Industries contended that the retained profits of businesses should not be subject to the full rate of tax. In view of a prospective era of high taxation, he said that savings which in the past had provided a flow of fresh capital into industry and business could not be counted on in the future, and it was therefore urgently necessary to enable businesses to some extent to provide this finance themselves. On behalf of the Association of British Chambers of Commerce, it was stated that profits as computed for taxation purposes were nearly always on a higher level than the same profits as they appeared to the commercial man. Many expenses were not allowed to rank for taxation purposes, and the high rate of taxation now made it very necessary that such expenses should be properly taken into account in arriving at taxable profits. The general principle for which the Association contended was that the loss in value of capital equipment used up in the course of manufacture and trade was a proper element of cost. Proper depreciation, it was stated, ought to be allowed for buildings, patents, trade marks, and preliminary and development expenses of no permanent value. It was also argued that excess profits tax bore most hardly on those concerns which had no profit standard, because of bad experience during the standard period, and that the substituted standard permitted by the Act was unduly restricted by a percentage on the capital employed. This, it was said, should be increased by 2 per cent., thus bringing the rate into line with that already allowed in the case of new capital. These are serious considerations. Industry must not be taxed out of existence. In the long run prosperity in industry and agriculture is the basis of all social security, and all systems of sound taxation must recognise this. It is good to have the Chancellor's assurances that he fully appreciates the anxieties expressed with regard to the post-war position.

Post-War Housing.

IT is generally agreed that one of the earliest calls on the national income after the war will be for expenditure on housing. In a circular issued on 4th March from the Ministry of Health to housing authorities and county councils, general instructions are given as to the immediate duties of authorities. The Minister regrets that he can hold out no hope of new house building at present save the provision which he has recently announced of a small number of cottages for agricultural workers. Nor is it possible at the present time to determine the nature and scale of the long-term housing programmes to be undertaken after the war, since these must depend on a number of factors, such as location of industry, reconstruction of damaged areas and general redevelopment, and on discussions of broad policy on such factors by the Government. But it is clear that the need for houses is already substantial, and the Minister is anxious that local authorities should now begin to formulate plans so as to be in a position to make a quick start immediately conditions permit, whether during or after the war. The Minister accordingly asks councils, if they have not already done so, to review their housing needs and to concentrate on the preliminary arrangements necessary to enable them to start on such part of the programme as would comprise one year's building work as soon as they are authorised to do so. In their general review, local authorities will take note of outstanding programmes for slum clearance and abatement of overcrowding, the loss of houses due to war damage and the changes that have occurred during the war. In drawing up a one-year's programme they will use as a rough guide their annual output of houses in pre-war years, though they will appreciate that it is not possible at the present moment to guarantee that circumstances in the first year of their operations will be such as to enable the full programme to be carried out. The first step, states the circular, is to decide on suitable sites. Many local authorities are already in possession of suitable sites and they may have housing estates only partially developed and obviously due for completion. Others will require to purchase additional land. In either case the authority should make sure that each of the sites selected is likely to fit in with future plans of development so far as they are ascertainable, and in particular that the sites are free from objections on planning and agricultural grounds. Where the Minister is satisfied that further land is necessary, he is prepared to entertain applications for consent to borrowing for the purchase of sites reasonably required for the execution of a year's programme prepared on this basis. It is probable that many local authorities will have available internal resources which can be used to meet this expenditure and thus obviate the need for external borrowing, and it is hoped that local authorities will adopt this course wherever practicable. The Minister hopes that most authorities will be able to purchase any land that may be required by agreement, but where this is found impossible he will consider applications for compulsory purchase orders in special cases. A sub-committee of the Central Housing Advisory Committee is now engaged in considering design and planning of post-war dwellings, and the Minister hopes to be able to transmit to the council at an early date the interim recommendations of the committee. Pending this further communication, local authorities will no doubt not wish to devote too much time on the production of actual plans and designs. The Minister, it is stated, will be glad to be informed in due course of the number of houses which the councils have in mind for their first year's programme and of the extent to which they already have land in their possession available for these houses, or of the additional sites which they propose to acquire. Information is also requested as to the extent of sites in private possession which were in process of active development before the war and which would be ready for early building. Directions have been given to the Ministry's regional architects to continue to call on the local authorities in their region to discuss with them their programme for housing after the war. In attacking the enormous arrears in housing created by the war, local authorities can be relied on to play their part, but the problems of the post-war period will only be adequately solved by determined and courageous financial arrangements by the Government.

Recent Decisions.

In *Lyon and Wife* v. *Daily Telegraph, Ltd.*, on 1st March (*The Times*, 2nd March), HILBERY, J., held that where fair comment was pleaded to an action for defamation in respect of a letter published in the defendants' newspaper and signed "A. Winslow, the Vicarage, Wallington Road, Winchester," and it was proved that there was no vicarage in Wallington Road, no Wallington Road in Winchester, and no clergyman of the Church of England of the name of A. Winslow, there was no evidence that anyone honestly held the views expressed in the letter, as the writer had taken refuge in anonymity, and the defence of fair comment therefore failed.

In *In re Orbit Trust, Ltd.'s Lease*, on 3rd March (*The Times*, 4th March), UTHWATT, J., held that where blocks of flats were damaged in part by enemy action but substantial parts were still fit and the value of the fit parts was in any case more than enough to enable the ground rents to be paid, none the less in fixing the ground rent to be paid under s. 10 (1) (*c*) of the Landlord and Tenant (War Damage) Act, 1939, the loss should be shared between the landlord and the tenant, because the basis of the legislation was that war damage causing unfitness was a common disaster affecting the landlord and the tenant, and the rent to be fixed should reflect a common loss to be shared between them. His lordship referred to the Statute 18 and 19 Car. II, c. 7, passed after the Fire of London, the preamble to which stated that it was just that everyone concerned should "bear a proportionable share of the loss according to their several interests," and said that he could see no reason for thinking that there was not implicit in the legislation of 1939 the principle of sharing loss which Parliament proclaimed as fair in 1666.

A Conveyancer's Diary.

Testamentary Annuities: Valuation.

On 3rd November, 1942, Uthwatt, J., delivered a reserved judgment upon the cases of *Re Bradberry* and *Re Fry* [1943] Ch. 35, which concerned the troublesome question how testamentary annuities are to be dealt with in cases where the estate is insufficient to provide for them by its income. In *Re Bradberry* the testatrix made a will in 1931 and died on 27th July, 1939. By her will she gave certain legacies: she also gave annuities to A, B and C for their respective lives, such annuities to be payable out of a fund, sufficient to answer them by its income, which was to be appropriated by her executors. The estate was not big enough at the death to provide the legacies and the appropriated fund; it was enough to pay the legacies and the capitalised value of the annuities. On 13th July, 1940, B died, and the estate then became sufficient to provide the legacies in full and for the appropriation in full of a fund to answer by its income the annuities given to A and C. It seems that before B's death there had been discussion of the idea that the annuitants should accept the capitalised values of their annuities and that B had agreed. But all parties had not given their respective assents until the end of July, 1940, after B's death, and when the residuary legatees heard of B's death they withdrew their assent. It appears that no further step was taken until after C had also died, which event took place on 4th May, 1941. At that point the executors were prepared to pay to the respective personal representatives of B and C the capitalised values, as at the testatrix's death, of their respective annuities. The residuary legatees, not unnaturally, objected, arguing that the estates of B and C were only entitled to the amounts of their respective annuities which would have been payable between the testatrix's death and their respective deaths; on that footing there would have been enough to appropriate a fund for A's annuity, which would mean, of course, that the residuary legatees would come in for that fund at A's death and, at once, for any surplus after appropriating it and paying the legacies.

The facts in *Re Fry* were very much the same. The testatrix made a will in 1937 and died on 28th June, 1940: she gave pecuniary legacies and made a specific devise; she then gave annuities to X and Y charged, as in *Re Bradberry*, on a fund to be appropriated. She directed that the fund, subject to meeting the annuities, should fall back into residue, and out of residue gave another pecuniary legacy and the ultimate balance to Z absolutely. At the testatrix's death there was not enough in the estate to pay the legacies and to appropriate the annuity fund in full; nor was there enough to pay in full the legacies and the capitalised value of the annuities, so that there would have had to be the further stage of an abatement. Discussions took place in the course of which X and Y "chose" to have the abated capitalised values of their annuities, but the matter "was not pursued." In January, 1941, X died and his personal representatives put in a claim to the capitalised value, as at the testatrix's death, of X's annuity (presumably subject to abatement).

In both cases the originating summonses asked, in effect, how the annuities were to be dealt with, and in both the real questions were (i) whether the conduct of the parties had modified the strict position, and (ii) whether once circumstances have arisen in which the capitalisation procedure can be applied, annuitants become entitled to have their annuities dealt with on that basis. Naturally, that method is far more favourable to the estates of annuitants who die shortly after the testator than if they are merely entitled to annuity payments during their lives. I confess that I had supposed that the less favourable alternative is the right one, and that it had been so held by Farwell, J., in *Re Ellis* [1935] Ch. 193; see the third point which the learned judge is stated in the head-note to that case to have held, and see his observations at p. 201. Such was also, in fact, the decision of Uthwatt, J., and it seems curious that learned counsel for the respective residuary legatees did not (if they are correctly reported) cite *Re Ellis* on this point.

The judgment of Uthwatt, J., covers a good deal of other ground, however, and is worth special attention as a statement of the principles to be applied in this class of case. It should be noted that he treated the principle as being exactly the same in the case where there would at all stages have been enough for the legatees and for the annuitants to receive their capitalised values in full as in that where an abatement was going to be necessary. That is a point of some substance, since it has sometimes been thought that the capitalisation rules applied only in abatement cases. (The estates in such cases are sometimes described as being "actuarially insolvent," an unfortunate expression, since insolvency connotes a state where *creditors* cannot be paid in full and not one where full effect cannot be given to the beneficial interests created by the will.) In *Re Cox* [1938] Ch. 556, Simonds, J., applied the capitalisation procedure as between annuitants and residuary legatees, in a case where the estate was not "actuarially insolvent," and there was some criticism of that decision at the time. It is to be hoped that these doubts will be set at rest by the reserved judgment of Uthwatt, J.

The learned judge first dealt with the question whether the negotiations between the parties had fixed the rights of the parties, and held that they had not done so. He observed that it is "within the competence of legal personal representatives to do what the court would order to be done" by way of "placing a value on annuities" for the purpose of the division of the estate. There is no need to go to the court unless the personal representative is in doubt; but in neither of these cases was there "an act of administration settling the position of the annuitants." He held that a mere intention or even decision to distribute on a certain footing is not enough to conclude the position of the annuitants, and indicated that he was not deciding whether anything less than actual distribution would do.

The learned judge then turned to consider what is the proper footing for dealing with annuities, apart from any arrangement. He is reported as having said that: "Having regard to the discussion in the Court of Appeal in *Re Twiss* [1941] Ch. 141, it is incumbent on me in determining this matter to do more than rely on the recent authorities." It seems doubtful what in fact his lordship actually said. *Re Twiss* was not in the Court of Appeal, but before Simonds, J., and I cannot find there or elsewhere any discussion casting doubts on the recent authorities. Uthwatt, J., proceeded to point out that the necessity to value annuities arises where "*the testator's intentions as expressed cannot be carried out*," whether or not abatement is also necessary. "The object to be achieved is to give effect to those intentions as nearly as may be when the plane on which they proceed does not exist. If any maxim of equity is applicable, it is the familiar maxim 'Equity delighteth in equality.' It is clear therefore that the question is one of administration and of administration only. Matters of administration are settled by practice which reflects common sense, or, what is to my mind the same thing, reason tempered by convenience." That being the basis, it becomes at once perfectly clear that equity would not be making equality if it insisted on the valuation of the annuity of an annuitant who was already dead, having died just after the testator; the effect would obviously not be to make equality, but to bring in the annuitant to claim for much more than the full amount of the testator's bounty to him. But that is to anticipate the later parts of the judgment.

Uthwatt, J., next pointed out that "one matter of practice is settled beyond dispute, namely, that the valuation should be an actuarial valuation, and that facts, such as the health of the annuitant or the risks attendant to his vocation, are to be disregarded" and further that wherever possible the valuation is to be by reference to the cost of a *government* annuity of the amount in question. (This point disposes of the suggestion, which I have seen made in practice, that the succession duty tables might on occasion be used instead.)

The next question is the date for the valuation. "On that there is not, I think, room for dispute. The right of the annuitant is to receive his due in the proper course of administration, and what is his due can only then be determined." There is nothing to be said for the idea that the right date is the end of the "executor's year," because there is nothing to prevent the executor distributing sooner; nor is the annuitant in the position of having a vested right, as from the testator's death, to have his annuity capitalised, because "the satisfaction of the annuity is a matter of administration only. There is only one right, namely, the right to an annuity, such right to be satisfied in a due course of administration." These observations appear to crystallise the position and to put it in perspective; they dispel the recent tendency to treat those principles as conferring new rights on the annuitant, whereas actually they are only concerned with giving effect as nearly as may be to the right to an annuity in due course of administration. If the annuitant gets that, he has no cause to complain.

On these principles it becomes clear what happens to the annuity of an annuitant who dies before the administration is complete. His death "enables the court exactly to measure what was in fact given to him" and to give him that (or its abated value if abatement is necessary). There is no need for the artificial method of actuarial valuation; that involves a prophecy of the length of life, which is unnecessary if the life has in fact dropped. Uthwatt, J., referred to other classes of case where facts make prophecy unnecessary, as for example in assessing damages to a widow, who is herself dead, under Lord Campbell's Act. "A principle is to be drawn from these authorities, namely, that where facts are available they are to be preferred to prophecies." That really disposed of the cases before him, but he also considered whether, apart from the death of the annuitant, there is any settled practice as to the date for valuation. If the matter is dealt with very shortly after the testator's death the date of the death can be safely taken, as the change in values through lapse of time is *de minimus*. But if there is a considerable interval, the time method is to value as at the date of valuation, and to add the correct sum for arrears of annuity between the testator's death and such date.

I do not think that this judgment breaks any new ground, as, indeed, I think that the point actually decided was really covered by *Re Ellis*, at least if that case is taken with *Re Cox*. But it

does state clearly, and in a way that carries conviction, the basis for considering those questions, and I hope that it will settle some at least of the questions that have of late arisen on this matter.

Landlord and Tenant Notebook.

Alternative Accommodation as a ground for Possession.

THE Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, was a Rent Act to end Rent Acts. If this had been appreciated by the county court judge who tried *Cumming* v. *Danson* (1943), 87 SOL. J. 21, he might have escaped the somewhat severe criticisms subsequently made in the Court of Appeal.

True, the "shall continue in force until the twenty-fourth day of June, nineteen hundred and thirty-eight, and no longer," with which s. 1 (1) of the Act mentioned concludes, shared the same fate as the "shall continue in force during the continuance of the present war and for a period of six months thereafter and no longer" to be found in the last subsection of the Act of 1915. But the fact remains that in 1933 it was thought that the effects of other legislation, namely, legislation designed to promote building, was and would be such that by 1938 control of rents could be dispensed with. Things did not move as fast as expected, hence the 1938 Act; and the reason for the passing of the 1939 statute is only too obvious.

It was, however, for reasons connected with the building programme as it then stood that the "grounds for possession" provisions of the old "principal Act," that of 1920, were modified, both in substance and in form. Before then they were set out *seriatim* in s. 5 (1) of the 1920 Act (as amended by the 1923 Act). "No order or judgment for the recovery of possession of any dwelling-house to which this Act applies . . . shall be made or given unless . . ." and then came the several paragraphs dealing with arrears of rent, nuisance, etc., and the subsection concluded "and, in any such case as aforesaid, the court considers it reasonable to make such an order or give such judgment." For the purpose of discussing *Cumming* v. *Danson* it is sufficient to mention that the series of grounds included "(*d*) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, or for any son or daughter of his over eighteen years of age, or for any person *bona fide* residing with him . . . and . . . the court is satisfied that alternative accommodation is available which is reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards extent, character, and proximity to work and which consists either of a dwelling-house to which this Act applies or of premises to be let as a separate dwelling on terms which will afford to the tenant security of tenure reasonably equivalent to the security afforded by this Act in the case of a dwelling-house to which this Act applies." In certain circumstances, the alternative accommodation was dispensed with: by the Prevention of Eviction Act, 1924, it was so dispensed with when the landlord wanted the house for himself or a son or daughter and the court was satisfied, having regard to all circumstances, that greater hardship would be caused by refusing than by granting an order.

When some thirteen years had elapsed Parliament considered that the housing position, thanks to subsidies and other stimuli provided by itself, had so improved and was likely so to improve that the availability of alternative accommodation could be made a ground for possession in itself. Accordingly, the 1933 Act provides, by s. 3 (1): "No order or judgment for the recovery of possession of any dwelling-house to which the principal Acts apply . . . shall be made or given unless the court considers it reasonable to make such an order or give such a judgment, *and either* (*a*) the court has power so to do under the provisions set out in the First Schedule to this Act; *or* (*b*) the court is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order or judgment takes effect."

The provisions set out in the First Schedule are substantially those formerly contained in s. 5 (1) of the 1920 Act (plus the Prevention of Eviction Act, 1924) above referred to. Paragraph (*d*) is represented by para. (*h*), the most important modifications being "his father or mother" instead of "any person *bona fide* residing with him" and that instead of "and . . . the court is satisfied that alternative accommodation is available which . . ." a proviso is added prohibiting the making or giving of the order or judgment "if the court is satisfied that having regard to all the circumstances of the case, including the question whether *other* accommodation is available to the tenant, greater hardship would be caused by granting the order or judgment than by refusing to grant it." It has been suggested that, while the "greater hardship" element is retained, the change of form transfers the burden of proving it to the tenant.

The added importance conferred on "alternative accommodation" by the 1933 Act is reflected in the four remaining subsections of s. 3. Subsection (2) enables landlords to prove availability by simply producing a certificate issued by the housing authority for the same area. Subsection (3) defines at length what shall be considered alternative accommodation in the absence of such a certificate. Subsection (5) provides for proving some of those requirements by less comprehensive certificates, and subs. (6) makes documents purporting to be certificates receivable in evidence.

Up to and also after that time it was the common experience of landlords who sought to establish the existence of alternative accommodation that the "security of tenure" requirement, mentioned in s. 5 (1) of the 1920 Act as set out above, and again in s. 3 (3) of the 1933 Act referred to above, constituted the fly in the ointment. A landlord might be able to prove that there were more desirable residences to be let at cheaper rents and nearer the tenant's work, but not be able to show that those houses were controlled or its equivalent.

The 1939 Act, by introducing the rateable value test for control and putting an end to decontrol, has done much to remove this difficulty; but even before then it was sometimes possible for a landlord to meet it by offering accommodation in another house of his own. And this, it so happens, was the position of the plaintiff in *Cumming* v. *Danson*.

The defendant in the case refused to quit a house on the expiration of his lease. The plaintiff was living in a cottage she also owned, sharing it with some refugees, and she wanted an invalid sister and the sister's husband to come and live with her. She therefore offered the defendant an exchange. He declined.

The mistake made by the county court judge was to treat the proceeding as based on para. (*h*) of Sched. I to the 1933 Act instead of on s. 3 (1) (*b*). This led him into applying the "greater hardship" test, which does not figure in the "alternative accommodation" ground.

But apart from that he erred, according to the Court of Appeal when considering whether it was reasonable to make the order asked for. This, of course, has to be considered in every case (see *Upjohn* v. *Macfarlane* [1922] 2 Ch. 256 (C.A.); *Williamson* v. *Pallant* [1924] 2 K.B. 173); but the judge "discussed and discussed only the appellant's needs in relation to the house which she sought to recover; he said not one word on the subject of any other matter which would affect reasonableness," Lord Greene, M.R., put it. The Acts were not meant "to operate in such a way as to penalise landlords instead of being, as they truly are, merely Acts for the protection of tenants."

The Court of Appeal further considered that there had been misdirection in refusing to take into account the refugees and relatives, whom the county court judge described as "not persons within sufficient proximity from a family point of view." This, I think, would be valid if para. (*h*) of the First Schedule had governed the proceeding, for, as pointed out, this omits the "any person *bona fide* residing with him" which was part of s. 5 (1) (*d*) of the 1920 Act that it replaced. However, it was clear that the judge had directed his attention entirely to the section dealing with the power of the court to give possession where no alternative accommodation was offered, and for this reason a new trial was ordered.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Provision for Occupation of Land by Tennis and Bowling Clubs Rent Free.

Q. A testator wishes his trustees to hold his land in the occupation of a tennis and bowling club on trust to permit the club to continue tenants for as long as they wish. The rent is to be applied partly in providing prizes for the members, and the remainder is to provide a fund to be under the control of the district nursing association for the benefit of aged or sick persons in the parish. If the club exercises the option, part of the purchase money is to be applied towards the above fund and the balance is to sink into residue. If the club is wound up or ceases to occupy the land, it is devised to the parish council to provide a recreation ground for the exclusive benefit of residents in the parish. We have advised the testator his wishes would offend the rule against perpetuities. We accordingly propose to devise the land to trustees for the lives in being at the testator's death (he is a bachelor) of the descendants of his deceased father and mother and for twenty-one years after the death of the survivor, and to confine the trusts within that period, the ultimate destination of the proceeds of sale or the land itself to take effect immediately on the expiration of the period.

A. We think the best suggestion we can make is that the client should now execute a long lease, ninety-nine or 999 years, at a peppercorn rent, with conditions as to user with power for the lessees to determine by notice and with proviso for determination by lessor if the lessees ceased to use the land for the main purpose for which it was let. The owner could then by his will recite the lease and devise the land subject to the lease to the parish council upon trust on the determination in any manner of the lease to use the land for the purpose of a recreation ground or to convey it to trustees for such purpose under the Recreation Grounds Act, 1859, or any other apposite enactment.

To-day and Yesterday.

LEGAL CALENDAR.

March 8.—On the 8th March, 1826, the future Lord Macaulay joined the Northern Circuit at Lancaster. In his biography by Trevelyan it is said that: "Under its social aspect Macaulay heartily enjoyed his legal career. He made an admirable literary use of the Saturnalia, which the Northern Circuit calls by the name of 'Grand Night' . . . He did not seriously look to the bar as a profession." Trevelyan also relates a story, which he inaccurately places at Leeds, not then an assize town, of how on the first evening he appeared in the mess he was noticed carefully selecting the longest candle before retiring for the night. An old King's Counsel warned him of the danger of reading in bed, to which he replied with great rapidity of utterance "I always read in bed at home, and if I am not afraid of committing parricide and matricide and fratricide I can hardly be expected to pay any special regard to the lives of the bagmen of Leeds."

March 9.—On the 9th March, 1830, Samuel Oldham, Edward Huggins and Thomas Caborn, three young men, were tried at the Lincoln Assizes for a burglary at a lonely house at Revesley. The owner, Mrs. Radsley, a widow, had been awakened by a noise between twelve and one on a January morning and had found three men in her room. They addressed her "by a coarse epithet" demanding her keys. One of them threatened to cut the throat of the maid whom they found in the passage; the girl broke away and got to the room of a man who slept over the kitchen, but he refused to come out and help. Meanwhile Mrs. Radsley and her daughter had got out of a window and run a quarter of a mile to give the alarm. The burglars had chosen a bad night for there was snow on the ground and the moon was bright. On their tracks was found a mustard spoon, part of their booty, and there was no difficulty in identifying them. They were all convicted and sentence of death was recorded against them.

March 10.—On the 10th March, 1877, Charlotte Ramsden, aged forty-two, Marie Vandervoort, aged sixty-two, Rachel Flatow, aged thirty-six, and Caroline Fremberg, aged forty-eight, were charged at the Old Bailey with conspiring to make a false accusation of felony against Julia Moses, a respectable lady in charge of a Jewish establishment at Norwood, who had been tried on their evidence at the Surrey Sessions. There were a lot of confusing allegations about a young lady buying dresses in Fremberg's shop in Whitechapel and offering the note in payment and about another women who had been persuaded to swear that she was in the shop at the time, whereas she now admitted that she was not. The whole story was very obscure and no real motive for the accusation emerged, though Ramsden alleged that she had given presents to Mrs. Moses, who denied it. The Common Serjeant sentenced Ramsden to five years' penal servitude, Vandervoort to eighteen months' imprisonment and Flatow and Fremberg, who pleaded guilty, to twelve months.

March 11.—On the 11th March, 1858, six men were tried at the York Assizes for a burglary committed at Flask House, near Cawthorne, the home of an old farmer of eighty-six. He woke up one night to find a tall man standing over him with a lantern and a bludgeon demanding where he kept his money. Other men were breaking open a chest and rifling the cupboards. All were disguised in masks and shirts and had pads on their boots. A seventh man who had turned King's evidence gave all the details of the crime, telling how they only found a guinea, some spoons and a few other articles. These they divided in a field, where they hid their disguises. His statements were corroborated on every point, but the identity of the prisoners. They were all found guilty, and Byles, J., commenting on the barbarity of the crime (for the old man had been struck with a bludgeon loaded with lead, every time he moved), ordered sentence of death to be recorded.

March 12.—On the 12th March, 1829, William Dowsett was tried at the Aylesbury Assizes for his part in a burglary at Radnage Rectory. The rector, who was seventy-eight years old, had been awakened one night by a noise at the window, and when he opened the shutter a man masked in crepe and brandishing a crowbar, forced his way in. Several others followed, all masked and disguised in long shirts and with threats and imprecations they compelled the old man and his wife to disclose where their valuables were. Their haul included £27, watches, rings, seals and plate. Immediately after they had gone the rector sounded a rattle, help came, and one of them was caught. He was tried and hanged, and after an interval Dowsett was arrested. The rector's wife, who had seen him by the light of the burglars' lanterns when his mask was off, remembered him vividly. He was convicted and Mr. Baron Vaughan sentenced him to death.

March 13.—On the 13th March, 1857, Lord Campbell recorded in his diary: "I paid my respects to Lady Wensleydale, and all our disputes about the life peerage were forgotten." Campbell was then Chief Justice, and in the previous year he had strenuously opposed the attempt to confer a life peerage on Mr. Baron Parke. The Committee of Privileges having decided that the Crown had no such power, he had been created Baron Wensleydale of Walton in the usual form.

March 14.—On the following evening the 14th March, Lord Campbell attended a reunion of all parties in the state at Lord Clarendon's. "We all looked like 'the happy family.' At first I was rather afraid that as Chief Justice I might have been called upon to preserve the peace."

Our County Court Letter.

Breach of Warranty of Motor Car.

IN *Mitchell* v. *Stout*, at Coventry County Court, the claim was for £80 as damages for breach of warranty on the sale of a motor car. The plaintiff's case was that, having heard that the car was to be laid up (owing to petrol restrictions) he approached the defendant with regard to buying the car. The latter was described by the defendant as a 1937 model, which had recently had a major overhaul, and had only had one previous owner. The plaintiff accordingly bought the car for £195, which amount he paid by cheque on 12th August, 1942. On taking the car to the makers, the plaintiff discovered that the car was a 1935 model, and had had four previous owners when the defendant bought it. Far from having had a major overhaul, the car had merely had new pistons, and a new screen-wiper, in 1941. The total cost was £19. The plaintiff subsequently asked the defendant for a receipt, which the defendant gave him. On the plaintiff pointing out that the year of the car was not mentioned in the receipt, the defendant added "1937" of his own accord. In order to put the car into running order, the plaintiff had to spend £51 in repairs. The defendant's case was that neither he nor the plaintiff knew much about the age of cars. Although 1937 had been mentioned, there was merely a general assumption that this was the year of the make of the car. The defendant never gave a warranty to this effect, and it was part of the bargain that, if the plaintiff did not like the car, he could return it and have his cheque back. In fact the defendant did not present the cheque for payment until 26th August, 1942, by which time (not having heard to the contrary) the defendant assumed the plaintiff was satisfied. His Honour Judge Forbes held that the defendant's action, in giving a receipt containing the figures "1937" as the year of the car, was consistent with his having previously made a statement to the same effect. This statement was made as a collateral bargain, apart from the main contract, and was a warranty. Judgment was given for the plaintiff, with costs.

Decision under the Workmen's Compensation Acts.

Recovery of Compensation from Third Party.

IN *Bromwich* v. *Great Western Railway Co.*, at Warwick County Court, the plaintiff's case was that his delivery van had been involved in a collision with a lorry, the property of the defendants. The plaintiff's driver had been injured and had been paid compensation by the plaintiff to the amount of £60 7s. 6d. He had been away from work from the 18th December, 1940 (the date of the accident), until August, 1941. His injuries were due to the negligence of the defendants' lorry driver, and an indemnity was sought against the defendants in accordance with the Workmen's Compensation Act, 1925, s. 30 (2). The defendants denied that the accident was due to their driver's negligence; he had been driving for three years without complaint. His Honour Judge Kennedy, K.C., held that the collision was due to the negligence of the defendants' driver. Judgment was given for the plaintiff for an indemnity to the amount claimed, with costs.

Lump Sum for Dermatitis.

IN *Rhodes* v. *Goodyear & Son*, at Dudley County Court, the case for the applicant was that he was employed from 26th February, 1941, in sweeping up steel and aluminium filings. On 25th June, 1941, he was certified by the certifying surgeon as suffering from dermatitis. He received 35s. a week compensation until 14th August, 1942, since when he had had no work or compensation. The case for the respondents was that the applicant was suffering from eczema, not dermatitis. He was aged sixty-four, and any disability was not due to industrial causes. There was no incapacity from the eczema. In view of the conflict of medical evidence, and the doubt as to liability, His Honour Judge Caporn approved a settlement for £100.

Girl's Earning Capacity.

IN *Chapman* v. *British Thomson-Houston Co., Ltd.*, at Rugby County Court, the applicant was aged nineteen. In May, 1942, she had sustained an injury to her hand from a mechanical saw, but had since recovered. Her average weekly earnings, over a year, had been £2 10s. 0½d., but in the eleven weeks prior to the accident they had amounted to £2 14s. 8d. Since resuming work, her average weekly earnings had been £3 0s. 1d. His Honour Judge Forbes observed that the latter rate might not be permanent. The case would be met, however, by a declaration of liability, with no order as to costs.

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.*]*

Matrimonial Causes (Amendment No. 1) Rules, 1943.

Sir,—These rules are set out on pp. 84 and 85 of THE SOLICITORS' JOURNAL of the 6th March. Rule 24 provides that the rules referred to by number mean the rules so numbered in the Matrimonial Causes Rules, 1937, and there is a footnote giving the number of the 1937 Rules as S.R. & O., 1937, No. 1150. Are not the rules referred to those of the 8th December, 1937, S.R. & O., No. 1113/L.14 ?

Tredegar, Mon. DAUNCEY & CO.
8th March.

[We are grateful to our subscribers for pointing out the error, which occurs in the official copy of these rules. H.M. Stationery Office inform us that the correct reference should be "S.R. & O., 1937 (No. 1113), p. 2195."—ED., *Sol. J.*]

Obituary.

MR. J. HAYNES.

Mr. John Haynes, solicitor, of Coventry, died on Wednesday, 24th February, aged seventy-seven. Mr. Haynes was admitted in 1895.

MR. B. R. WOOLLCOMBE.

Mr. Basil Richard Woollcombe, solicitor, and senior partner of Messrs. Walker, Martineau & Co., solicitors, of 12, Manson Place, S.W.7, died on Tuesday, 2nd March. Mr. Woollcombe was admitted in 1901.

War Legislation.

STATUTORY RULES AND ORDERS, 1942 AND 1943.

E.P. 281. **Apparel and Textiles.** Corsets (Manufacture and Supply) (No. 5) Directions, Feb. 25.
E.P. 286. Apparel and Textiles. Footwear (Manufacture and Supply) (No. 7) Directions, Feb. 25.
E.P. 259. Apparel and Textiles. Footwear (Rubber and Industrial) (No. 4) Directions, Jan. 20.
E.P. 270. Apparel and Textiles. Fur Apparel (No. 4) Directions, Feb. 25.
E.P. 269. Apparel and Textiles. Gloves (No. 6) Directions, Feb. 25.
E.P. 256. Apparel and Textiles. Headwear (No. 4) Directions, Feb. 24.
E.P. 264. Apparel and Textiles. Knitted Goods (Manufacture and Supply) (No. 4) Directions, Feb. 26.
E.P. 278. Apparel and Textiles (No. 4) Order, Feb. 23.
E.P. 257. **Consumer Rationing.** General Licence, Feb. 19, *re* Supply of certain Second-hand household textiles without coupons.
E.P. 160. Consumer Rationing. Revocation, Jan. 31, of General Licence and Direction, June 23.
E.P. 295. **Control of Noise** (Defence) Order, Feb. 22.
E.P. 288. **Control of Paper** (No. 48) Order, 1942. Direction No. 6, Feb. 25. (Quantity of paper which may be used in the production of any newspaper, news-bulletin, magazine or periodical printed or made in the U.K.)
E.P. 282. **Electricity.** Public Works Facilities Act, 1930 (Aylesbury) (Upper Hundreds) (Relaxation) Order, Feb. 16.
E.P. 290. **Food** (Licensing of Establishments) Order, Feb. 25.
E.P. 291. Food (Local Distribution) Order, Feb. 25.
E.P. 267. **Footwear** (Repairs) (No. 2) Directions, Feb. 20.
No. 228. **Goods and Services** (Price Control). Price-Controlled Goods (Restriction of Resale) (No. 2) Order, 1942. General Licence, Feb. 26. (Rubber Boots).
No. 229. **Highway, England.** Kent (County Roads Cesser) Order, Feb. 13.
E.P. 297. **Hire-Purchase** (Control) (No. 2) Order, Feb. 26.
E.P. 317. **Lighting** (Restrictions) (Amendment) (Northern Ireland) Order, Feb. 26.
E.P. 161. **Limitation of Supplies** (Miscellaneous). Revocation, Jan. 31, of General Licence and Direction, Sept. 16, 1941, as amended by Order dated June 15, 1942.
E.P. 271. Limitation of Supplies (Miscellaneous). General Licence, Feb. 22, *re* Scissors.
E.P. 265. **Making of Civilian Clothing** (Restrictions) (No. 17) Order, Feb. 25.
E.P. 298. **Milk** (Use of Bottles) Order, Feb. 26.
No. 294. **National Health Insurance** (Approved Societies) Amendment Regulations, Feb. 2.
E.P. 273. **Police Amalgamation** (Surrey) Order, Jan. 28.
No. 258. **Prevention of Fraud** (Investments) Act Licensing (Amendment) Regulations, Feb. 19.
No. 283/L.8. **Supreme Court, England.** Procedure. Rules of the Supreme Court (Poor Persons), Feb. 23.
No. 216. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 3) Order, Feb. 20.
No. 287. **War Damage** (Business Scheme) (No. 11) Order, Feb. 25.

WAR OFFICE.

Home Guard Regulations, 1942. Vol. I, Amendments 2, Feb. 1943.

Notes of Cases.

COURT OF APPEAL.

Richards *v.* Cox.

Scott, MacKinnon and Goddard, L.JJ. 10th November.

Solicitors—Negligence—Acceptance of workman's compensation on behalf of injured client—Possibility of successful action for negligence—Third-party insurance policy in common form covering employer—Whether liability of driver covered by policy—Exclusion of employees of primary insured.

Defendant's appeal from a judgment of Oliver, J., awarding the plaintiff £1,477 19s. 6d. damages for negligence in respect of advice given to the plaintiff by the defendant's managing clerk.

The appellant was a solicitor employed to advise the plaintiff and, if necessary, to prosecute a claim in respect of personal injuries which she suffered when driven in a car owned by Dickerson Bros., a firm of confectioners who at that time employed the plaintiff as a traveller. The car was driven by Robson, a man in the employ of Dickerson Bros. and the accident was due to the negligence of Robson. The appellant received the respondent's name from a friendly society, and he wrote to her asking whether she desired to employ him, and if so, whether she would give him a retainer. She did so, and after that her interests were looked after by the appellant's managing clerk, the appellant leaving the matter entirely in his hands. The managing clerk, who was not an admitted solicitor, took the view, after writing to the insurance company who had insured Dickerson Bros. in respect of the car in question, that no action lay against Dickerson Bros. because both the respondent and Robson were employed by the same employer and that such a claim was not covered by their policy. He advised the respondent to get the best she could, and that that was limited to a claim for workmen's compensation. She prosecuted that claim and received a sum of £660 in settlement, which was not adequate to compensate her for her serious injuries. The learned judge held that there was a provision in the policy by which the company covered liability incurred by a person related to Dickerson Bros. in the way in which Robson was related to them, as driver authorised to drive the insured car, and that had a claim been made against Robson and his liability established, whether by action or admission, the company would have been liable under the policy.

SCOTT, L.J., said that the appeal turned on the wording of the policy, which was in common form. Under the heading "Liability to third parties" it was provided: (1) "The company will indemnify the insured against liability at law for compensation and claimant's costs and expenses in respect of: Death of or bodily injury to any person caused by or arising out of the use of any vehicle described in the schedule hereto: Provided always that the company shall not be liable in respect of . . . (B) death of or bodily injury to any person in the employment of the insured arising out of and in the course of such employment . . . (2) In terms of and subject to the limitations of and for the purposes of this section the company will treat as though he were the insured person any person who is driving such vehicle on the insured's order or with his permission provided . . . (B) that such person shall, as though he were the insured observe, fulfil and be subject to the terms, exceptions and conditions of this policy in so far as they can apply." In his lordship's view the last seven words meant that such of the terms, conditions and exceptions of the insurance given to Messrs. Dickerson Bros. as were reasonably applicable to the insurance of their driver's liability were incorporated in the latter's cover, but in so far as they were not applicable they were to be disregarded. This was a natural provision to be made having regard to s. 36 of the Road Traffic Act, 1930. There was no escape from the conclusion that Robson's liability was covered by the insurance. It had been strenuously argued that the provisos to the first paragraph shut out the interpretation given by his lordship to the second paragraph. Those provisos seemed to his lordship to be addressed to the case of Dickerson Bros. incurring the liability, and to the insurance of them for their own protection under the statute. Even if read as in some circumstances applicable to the case of the insurance of a driver authorised by them to drive the insured car, they were not sufficient to affect the primary object of the quite separate clause (2) which was the insurance of the driver. In his lordship's view that second paragraph was a definite insurance of the driver against third-party liability, and it should have been obvious to the managing clerk that no question as to the relationship of the injured person to the driver, or the issue of common employment, could arise. The provisions of cl. (1) relating to the insurance of the employer could not properly be introduced into para. (2) relating to the insurance of the driver. There were no words to justify that incorporation. The appeal would be dismissed.

MACKINNON and GODDARD, L.JJ., delivered judgments to the same effect.

COUNSEL: *H. D. Samuels*, K.C., and *N. R. Fox-Andrews*; *Henry Burton*.

SOLICITORS: *Hair & Co.*; *Malkin, Cullis & Co.*, for *W. L. Kitchen*, Lincoln.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Simon *v.* Islington Borough Council and Another.

Scott, MacKinnon and Goddard, L.JJ. 10th December, 1942.

Tort—Highway authority—Doctrine of liability for misfeasance but not non-feasance—Tramlines left embedded in highway—Danger and nuisance to users of highway—Whether misfeasance—Tramlines taken over by highway authority—Tramways Act, 1870 (33 & 34 *Vict.*, c. 28), *ss.* 26, 28 *and* 55—*London Passenger Transport Act*, 1933 (23 *Geo.* 5, *c.* 14), *s.* 23.

Appeal from a judgment of Croom-Johnson, J., in favour of the defendant highway authority in an action under the Fatal Accidents Acts by the personal representative of a deceased boy against a highway authority for alleged negligence or alternatively nuisance, by reason of tramlines and

adjoining setts being out of repair, as a result of which the boy was thrown from the bicycle which he was riding and forthwith run over by an omnibus of the London Passenger Transport Board. Judgment was also given in favour of the London Passenger Transport Board, and there was no appeal against it. The tramway rails and setts at the time of the accident were in a dangerous condition owing to the rails and setts not being level with each other, and that was the cause of the accident. The learned judge held himself bound by the decision of Atkinson, J., in the similar case of *Ingram* v. *West Ham Borough Council* (unreported), where it was held that the highway authority was protected under the doctrine that they were liable for misfeasance but not for non-feasance. Under s. 26 of the Tramways Act, 1870, the duties of the tramway undertaking, from which the London Passenger Transport Board took over, had been "to maintain the tramway in such manner that the uppermost surface of the rail is on a level with the surface of the road," and under s. 28 to maintain and keep in good repair the setts on each side of the rails at that level. A breach of that duty causing injury to a person lawfully in the highway was actionable as statutory negligence (see s. 55 of the 1870 Act and *Dublin United Tramways Co., Ltd.* v. *Fitzgerald* [1903] A.C. 99). Alternatively, an action lay for nuisance at common law. The London Passenger Transport Board Act, 1933, by ss. 5 and 100, transferred to the Board the various tramway undertakings mentioned in the Second Schedule and imposed the above-mentioned duties on the Board in respect of the tramway equipment, *inter alia*, in the Islington area. Section 23 of the Board's Act in effect superseded s. 41 of the Tramways Act, 1870, which contained a code about discontinuance of a tramway, and conferred on the Board the right in its discretion at any time to give notice of abandonment of its tramway equipment in any area to the local highway authority "responsible for the road on or above which the tramway is laid or erected" (s. 23 (1) and (2)). By s. 23 (3) and (4), the Board had the right, or if the responsible highway authority required, the duty within a limited time to remove its equipment and make good the road. By s. 23 (5) the highway authority was empowered within two months of the Board's notice to give a counter-notice saying that they would do the removal, but at the expense of the Board, save that they were to credit the Board with the proceeds of the sale of the tramway equipment taken over by them; and they were required to carry out the work with all reasonable dispatch. Section 23 (7) provided: "As from the date on which abandonment by the Board of any tramway or part thereof takes effect, the Board shall cease to be charged with any expenses incurred under, and shall be relieved of any liability arising by virtue of, any statutory enactment relating to the maintenance or repair of the road by the persons working the tramway or part thereof, as the case may be." The Board gave its three months' notice of abandonment under s. 23 on 23rd September, 1938. On 9th November the council gave their counter-notice. The notice of abandonment therefore took effect within s. 23 (7) on 24th December, 1938. From then up to 2nd April, 1941, nothing was done by anybody to see that the tramway equipment taken over by the Board was maintained in a safe condition.

SCOTT, L.J., delivering the judgment of the court, said that the physical things constituting the "tramway equipment" within s. 23 (3) were originally inserted in the road under s. 26 of the 1870 Act. They remained foreign to the highway, though on the road, and remained in the legal possession first of the tramway promoters and then of the Board. When they were abandoned to the council, both property and possession passed to the council. The principle that a highway authority was not liable for non-feasance was wholly irrelevant. That immunity descended to it as lineal successor first of the surveyor of highways and, before him, of the inhabitants at large. But it must continue to be limited to those duties. In the present case the council stood in the shoes of the Board for the sole purpose of removing the Board's cast-off superfluities. It was the choice of the council that stopped the removal by the Board. The council wanted for ulterior reasons to let the plant remain in the road until such time as it should suit the council's convenience to remove it. That was a positive and active step taken by the council, and in its essence was the reverse of non-feasance. The immunity of highway authorities extended only to characteristic highway duties, such as that of repairing the road, and not to public health duties (*White* v. *Hindley Local Board of Health*, L.R. 10 Q.B. 219), nor to the duty of protecting the public from falling into an unfenced pit alongside the high road; nor to duties imposed by the Road Traffic Acts, 1930 and 1934 (*Skilton* v. *Epsom and Ewell Urban District Council* [1937] 1 K.B. 112). There was no material difference between the last-mentioned case and this. The iron and stone which had been a tramway, lost their identity and became incongruous foreign matter in a modern road, and were obstructions to traffic. They were no part of the road proper, and the duty of the council as highway authority was to treat them as obstructions to traffic, protect traffic from their dangers, and abate the nuisance as soon as they could. They were in no better position than if they themselves had put similar lengths of metal and blocks of granite in the surface of the road, where as road material they had no place. The council were in no better position than if the board had gone into liquidation and the council had bought the old iron and granite from the liquidator in order to remove it themselves and sell it at a profit. *Skilton's* case was binding on the court, to the effect that the relation of a highway authority to works constructed on a highway for other than highway purposes, by whomsoever placed there, was not one clothed with the immunity of the highway authority (see also *White* v. *Hindley Local Board of Health*, L.R. 10 Q.B. 219, at p. 223). The appeal would be allowed with costs and judgment would be entered for the plaintiff for £450 1s., the sum fixed by the learned judge.

COUNSEL: *Sergeant Sullivan*, K.C., and *H. E. Holdsworth* (for *Marlowe*, on war service); *S. R. Edgedale*.

SOLICITORS: *White & Co.*; *William C. Crocker*.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

In re **A Debtor (No. 8 of 1942),** *Ex parte* **The Official Receiver** *v.* **Salaman.**

Farwell, J. 29th January, 1943.

Bankruptcy—Deed of arrangement—Debtor covenants in deed to pay half his earnings to trustee—Whether covenant good against trustee in bankruptcy.

Motion.

The debtor entered into a deed of arrangement dated the 21st May, 1940. By that deed he covenanted to pay to the respondent, the trustee under the deed, one-half of his earnings as an actor, less income tax, until such time as the claims of his creditors should have been paid in full, and he further agreed to authorise his theatrical agent to pay to the respondent one-half of such earnings. Pursuant to the deed the debtor's theatrical agent paid to the respondent £256 and £60. On the 12th May, 1942, a receiving order was made on the debtor's own petition, the applicant, the Official Solicitor, being appointed the trustee. On the 30th September, 1942, the debtor was granted his discharge, subject to a suspension of eighteen months. By this motion the trustee in bankruptcy sought a declaration that the obligation undertaken by the debtor under the deed of the 21st May, 1940, to pay one-half of his earnings to the respondent, as trustee under the deed, did not authorise the debtor to pay, or the respondent to receive, any moneys earned by the debtor between the date of adjudication and the date when his discharge became effective.

FARWELL, J., said that, if the deed had created a charge on future profits of a business, there would have been no doubt but that the trustee in bankruptcy would be entitled to them. It was said, however, that this was not a case of the future profits of a business, but a charge upon the future professional earnings of the debtor, and different considerations arose. He was unable to say that the principle applicable to future earnings of a business did not apply to the present case. Accordingly, the applicant was entitled to the relief he sought.

COUNSEL: *V. R. Aronson*; *W. A. L. Raeburn*.

SOLICITORS: *The Solicitor, Board of Trade*; *W. Wallace Harden*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Russell *v.* **Weinreb.**

Uthwatt, J. 5th February, 1943.

Emergency legislation—Mortgage—Interest in arrear—Mortgagee seeks order for possession—No notice in writing calling in capital—Jurisdiction to make order—"Mortgage money"—Possession of Mortgaged Land (Emergency Provisions) Act, 1939 (2 & 3 *Geo.* 6, *c.* 108), *s.* 1 (1), (2).

Adjourned summons.

By a charge by way of legal mortgage dated 5th November, 1935, the defendant charged certain freehold premises in favour of R to secure £8,300 and interest. On the 5th August, 1942, the sum of £1,156 16s. 3d. was owing in respect of arrears of interest. The plaintiffs, as the personal representatives of the deceased mortgagee, having obtained the necessary leave under the Courts (Emergency Powers) Act, 1939, by this summons sought an order for possession of the mortgaged premises. The order was opposed by the defendant, who claimed to be entitled to the benefit of the Possession of Mortgaged Land (Emergency Provisions) Act, 1939, on the ground that the mortgagees had not served a written demand for payment of the mortgage money. That Act provides, s. 1: "(1) Where any land is the subject of a mortgage made before 3rd September, 1939, the mortgagee shall not be entitled to obtain possession of the land, unless default has been made in payment of the mortgage money or any part thereof or of any interest thereon . . . (2) For the purposes of this section default shall not be deemed to have been made in payment of any mortgage money, unless a written demand for payment has been served on the person liable, and a period of three months has elapsed since the service of the demand: Provided that this subsection shall not apply where the mortgage money is repayable by instalments."

UTHWATT, J., said he thought it was obvious that in the proviso to subs. (2) the expression "mortgage money" could relate only to principal, because interest in common experience was not payable by instalments, whereas principal was. Having regard to that and to the differentiation in subs. (1) between "mortgage money" and "interest thereon" as a matter of terminology it appeared to him that the right construction was that mortgage money in subs. (2) meant principal and did not include interest. Accordingly, the mortgagees were not precluded by the absence of any written demand for payment from obtaining an order for possession as it was agreed that interest was in arrear.

COUNSEL: *Ingram J. Lindner*; *H. J. Astell Burt*.

SOLICITORS: *Fisher, Dowson & Wasbrough*; *Phoenix, Levinson, Walters and Shane*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Parliamentary News.

HOUSE OF LORDS.

Courts (Emergency Powers) Bill [H.L.].
Evidence and Powers of Attorney Bill [H.L.].
War Damage (Amendment) Bill [H.C.].
Read Second Time. [9th March.

QUESTIONS TO MINISTERS.

SASH-CORDS IN LOCAL AUTHORITIES' HOUSES.

Mr. THORNE asked the Minister of Health whether his attention has been called to the judgment of the House of Lords overruling the previous decision that a broken sash-cord in the window of a front bedroom in a two-bedroom house rendered the house not in all respects reasonably fit

for habitation; and, as this judgment will have serious repercussions upon the obligations of local authorities responsible for the maintenance and letting of council houses, what does he intend doing about the matter,

Miss HORSBRUGH: My right hon. Friend has seen reports of the case referred to by my hon. Friend and has noted the interpretation given by the courts of the obligations imposed by Section 2 (1) of the Housing Act, 1936, on local authorities, in common with other landlords who let small houses. My right hon. Friend cannot accept the implication in the second part of the Question, and, as at present advised, he is not prepared to introduce legislation which would limit the safeguards to tenants conferred by the Section as it now stands. [2nd March.

Rules and Orders.

S.R. & O., 1943, No. 283/L.8.

SUPREME COURT, ENGLAND.—PROCEDURE.

THE RULES OF THE SUPREME COURT (POOR PERSONS), 1943.

DATED FEBRUARY 23, 1943.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by the Administration of Justice (Emergency Provisions) Act, 1939,* and of all other powers enabling me in this behalf, and with the concurrence of two other Judges of the Supreme Court, do hereby make the following Rules of Court under Section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925† :—

1. In paragraph (3) (*b*) of Rule 23 of Order XVI, after the word "obtain" there shall be inserted the words "and enforce an order for".

2. The following Rule shall be inserted in Order XVI after Rule 28A and shall stand as Rule 28B—

"28B.—(1) Where during the war period The Law Society or a Provincial Law Society has decided, after enquiry by the Poor Persons Committee of the Society, to issue a certificate admitting a poor person to institute, defend, or be a party to a matrimonial cause, or has issued such a certificate, and at any subsequent time during that period the Poor Persons Committee are satisfied that—

(*a*) it is impracticable within a reasonable item to nominate a conducting solicitor for the purpose of the proceedings; or

(*b*) in a case where a certificate has been issued, the conducting solicitor nominated for the purpose of the proceedings cannot effectively undertake or prosecute the conduct thereof;

the Committee may nominate as conducting solicitor for the purpose of the proceedings any solicitor employed by The Law Society for the purpose of conducting matrimonial causes on behalf of poor persons.

(2) The provisions of paragraphs (2) to (4) of Rule 28A of this Order shall apply in the case of matrimonial causes conducted by a solicitor employed by The Law Society who has been nominated under the foregoing paragraph of this Rule as they apply in the case of proceedings to which Rule 28A relates.

(3) Where under paragraph (1) of this Rule a solicitor employed by The Law Society has been nominated as conducting solicitor in relation to any proceedings in the place of a solicitor previously nominated by a Poor Persons Committee, the last mentioned solicitor shall return the papers relating to the proceedings to the Committee and thereafter may discontinue his assistance without compliance with the provisions of Rule 30 (3) of this Order.

(4) In this Rule the expression 'war period' means the period during which the Emergency Powers (Defence) Act, 1939, is in force."

3. The following paragraph shall be substituted for paragraph (1) of Rule 31B of Order XVI, namely :—

"(1) The Court or a Judge may order the out-of-pocket expenses of a poor person to be paid by any other party. Such an order shall be deemed to include all out-of-pocket expenses properly incurred in the course of the proceedings, but not office expenses, or fees to counsel or, Court fees, and where a sum has been paid to The Law Society under Rule 28A or Rule 28B of this Order the order shall be deemed to include that sum."

4. The following Rule shall be added to Order LXXI, namely :—

"3. Where the provisions of any Act referred to in these Rules have been repealed and re-enacted, with or without modification by any subsequent Act, references in these Rules to the provisions so repealed shall, uless the contrary intention appears, be construed as references to the provisions so re-enacted."

5. In the Rules of the Supreme Court (No. 1), 1941, the following paragraph shall be substituted for paragraph (2) of Rule 5, namely :—

"(2) This Rule shall continue in force so long as the Emergency Powers (Defence) Act, 1939, is in force, and no longer."

6. These Rules may be cited as the Rules of the Supreme Court (Poor Persons), 1943.

Dated the 23rd day of February, 1943. *Simon*, C.

We concur, *Caldecote*, C.J.
Merriman, P.

* 2 & 3 Geo. 6, c. 78. † 15 & 16 Geo. 5, c. 49.

At the monthly meeting of the directors of the Solicitors' Benevolent Association held at 60, Carey Street, W.C.2, grants amounting to £1,169 5s. were made to twenty-eight beneficiaries.

The usual monthly meeting of the directors of The Law Association was held on the 1st March, Mr. G. D. Hugh Jones in the chair. There were five other directors present. Applications for assistance were considered and £127 was voted in relief of deserving applicants and other general business was transacted.

Notes and News.

Honours and Appointments.

The King has approved the recommendation of the Home Secretary that Mr. STEPHEN G. HOWARD be appointed Recorder of Bury St. Edmunds in succession to Sir Reginald Neville, who has resigned. Mr. Howard was called by Lincoln's Inn in 1924.

The King has approved the recommendation of the Home Secretary that Mr. ARTHUR MORLEY, O.B.E., K.C., be appointed a Metropolitan police magistrate. Mr. Morley was called by the Middle Temple in 1913 and took silk in 1933. He has been Recorder of Leeds since 1940, and, with the sanction of the Home Office, he will retain for the time being this office and that of Chancellor of the Diocese of Bradford.

The Lord Chancellor has appointed Mr. J. D. METTERS, Registrar of the Cambridge, Newmarket, Ely and Royston County Courts, to be in addition the Registrar of Bishop's Stortford and Saffron Walden County Courts as from the 1st March, 1943.

Mr. MILES BEEVOR has been appointed chief legal adviser to the L.N.E.R. Mr. W. H. Hanscombe will continue to be solicitor to the company. Mr. Beevor was admitted in 1925.

Mr. JOHN GREAVES, Deputy Town Clerk of Morecambe and Heysham, has been appointed Senior Assistant Solicitor at Leicester. Mr. Greaves was admitted in 1937.

Notes.

The directors of the Legal & General Assurance Society, Ltd., have received with regret the resignation of Mr. Miles Beevor, who has relinquished his directorship of the Society consequent upon his appointment as Chief Legal Adviser to the London & North Eastern Railway. Mr. Miles Beevor had been a director of the Society for nearly ten years.

WAR DAMAGE REPAIRS.

The War Damage Commission issued in the *London Gazette* of the 5th March a notice which affects the following area :—

COUNTY BOROUGH OF SWANSEA.—An area comprising St. Thomas Ward.

The notice is issued under s. 7 (2) of the War Damage Act, 1941, whereby provision is made for securing that the making of payments by the Commission in respect of war damage shall have regard to the public interest. The publication of the notice in the *Gazette* is, therefore, of great importance to all those with interests in war-damaged property, and particularly to those professionally concerned with work on such properties, since upon them must, in practice, fall the responsibility, on behalf of their clients, for seeing that the requirements of the Act are complied with.

The effect of the notice is that any person proposing to execute works for the repair of war damage, other than temporary works, in the ward named where the total ultimate cost will be more than £100, or ten times the net annual value (whichever is the less), on any one hereditament, must first inform the Commission. That body in its turn will consult the appropriate local and planning authorities to ascertain whether the carrying out of the proposed works would conform with their intentions regarding replanning and other public interests. The condition laid down regarding notification will be strictly enforced, and the incurring of a larger expenditure without prior notification to the Commission will render the person doing such works liable to forfeit the right to repayment by the Commission. If, therefore, there is a doubt whether the figure named will be exceeded, the proposed work should be notified to the Commission. The powers conferred upon the Commission by the Act are exercisable only in direct relation to war damage.

This notice should be read in conjunction with the notices which appeared in the *London Gazette* on the 19th August, 1941, and the 7th August, 1942. The conjoint effect of the three notices is that within the Alexandra, Castle, and St. Thomas Wards, all works costing more than £100 or ten times the net annual value (whichever is the less), should be submitted to the Commission. In the remainder of the area of the County Borough of Swansea, all works costing more than £1,000, or ten times the net annual value (whichever is the less), should likewise be submitted to the Commission.

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

HILARY SITTINGS, 1943.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.			EMERGENCY ROTA.	APPEAL COURT I.	Mr. Justice FARWELL
Monday,	Mar.	15	Mr. Reader	Mr. Andrews	Mr. Jones
Tuesday,	,,	16	Blaker	Jones	Hay
Wednesday,	,,	17	Andrews	Hay	Reader
Thursday,	,,	18	Jones	Reader	Blaker
Friday,	,,	19	Hay	Blaker	Andrews
Saturday,	,,	20	Reader	Andrews	Jones

DATE			GROUP A. Mr. Justice BENNETT *Non-Witness*	Mr. Justice SIMONDS *Witness*	GROUP B. Mr. Justice MORTON *Witness*	Mr. Justice. UTHWATT *Non-Witness*
Monday,	Mar.	15	Mr. Blaker	Mr. Andrews	Mr. Reader	Mr. Hay
Tuesday,	,,	16	Andrews	Jones	Blaker	Reader
Wednesday,	,,	17	Jones	Hay	Andrews	Blaker
Thursday,	,,	18	Hay	Reader	Jones	Andrews
Friday,	,,	19	Reader	Blaker	Hay	Jones
Saturday,	,,	20	Blaker	Andrews	Reader	Hay